We think that the Company in the present case can be said to come within that definition, and in our opinion clearly has a right of appeal to the Board of Review under section 75(1) of the Ordinance.

It only remains to consider the third, and last, question. No argument was addressed to us on this point. We think that the answer to this question is to be found in sub-section (10) of section 76 of the Ordinance. That sub-section reads :—

"The Board may, after hearing an appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit."

In ordering that "tht assessment be adjusted so as to charge at 20% an amount equal to the amount of the dividends paid in 1950" the Board was clearly acting in the exercise of powers conferred by this sub-section, and we think that the Board were right in so acting.

For these reasons we dismissed the appeal.

*Appeal dismissed.*

Solicitors for the respondents : *Bannon & Bailey.*

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## ABDUL KARIM v. REGINA; SUNDRA SINGH v. REGINA; LOH KAI HOI v. REGINA.

[A. Cr. J. (Brown, Ag. C.J.) February 2, 1954]

[Singapore — Magistrate's Appeals Nos. 218, 229 and 231 of 1953]

*Road Traffic Ordinance, 1941, s. 27(1) — Driving under the influence of drink — Sentence of imprisonment for a first offence — Facts of each to be considered in passing sentence.*

In each of the above cases, the respective appellant was sentenced to three months' imprisonment on charge of driving under the influence of drink. The learned Magistrate in his grounds of decision said he took a serious view of this type of offence.

**Held:** (1) in considering whether a prison sentence should be imposed in the case of a first offender the facts of the case must be carefully considered and the gravity assessed according to the "yard stick" afforded by the legislature in providing a maximum of four months' imprisonment for a first offence; (2) any tendency to standardise punishment for any type of offence is to be deplored because it means that the individual offender is being punished not on the facts of his particular case but because he has committed an offence of this type.

*Cases referred to :—*

(1) *James William Howell* 32 Cr. App. R. 173.

(2) *Thompson v. Knight* (1947) 1 K.B. 336.

MAGISTRATE'S APPEALS.

*David Marshall* for appellant Abdul Karim.

*D. G. Osborne Jones* for appellant Sundra Singh.

*L. Rayner* for appellant Loh Kai Hoi.

*Cur. Adv. Vult.*

**Brown, Ag. C.J.** : — These three appeals were heard on the same day, and it will be convenient to deal with them together. In each case the appellant was convicted *inter alia* of driving under the influence of drink, contrary to section 27(1) of the Road Traffic Ordinance, 1941. In each case the appellant was sentenced to 3 months imprisonment on that charge. Each case had been tried by the same Magistrate and in each case the learned Magistrate had expressed, in his Grounds of Decision, the serious view which he took of this type of offence. In each case I upheld the convictions but the sentences of imprisonment were quashed and fines were substituted.

In the matter of punishment, the "type of offence" is the concern of the Legislature, which has provided the maximum punishment which can be inflicted for a serious offence of that type. The particular offence, and the particular offender, are the concern of the Court, whose business it is to decide what punishment is merited upon the facts of the individual case within the limits which the Legislature has provided. Any tendency to standardise punishment for any type of offence is to be deplored because it means that the individual offender is being punished not upon the facts of his particular case but because he has committed an offence of that type. This tendency is particularly to be resisted in imposing punishment for an offence for which the Legislature has not left a wide field of discretion to the Court. For the offence which I am considering (unlike the offences, for example, of robbery or rape) the Legislature has limited the Court's discretion to a fine of $500 or 4 months' imprisonment for a first offence.

It is right that I should say that the learned Magistrate, when he tried these three cases, had not had the advantage of seeing the judgments of Taylor, J. in Magistrate's Appeals No. 225 of 1953 (*Lindsay*) and No. 176 of 1953 (*Perera*). In both those cases the appellant was a first offender and had been sentenced to 3 months imprisonment. In the former case the learned Judge quashed the sentence of imprisonment and substituted the maximum fine. In the latter case he reduced the sentence of imprisonment to one month. In the latter case the evidence of the appellant's condition was that he was too drunk to make a statement at the Police Station and that bail had to be refused because he was incapable of establishing his identity. I respectfully agree with both those decisions. The latter was, in my opinion, a proper case for imprisonment, and it was on account of the appellant's circumstances

(age, etc.) that the learned Judge reduced the sentence from 3 months to one.

I do not propose to set out the facts of the three cases with which I am now dealing. It is sufficient to say that if I had been in the position of the learned Magistrate I should not have considered that the facts of any of these cases justified a prison sentence for a first offender. Moreover the sentence imposed was in each case three-quarters of the maximum for a first offender. But it is conceivable that, except in case No. 229 of 1953, I might only have reduced the prison sentences if I had been satisfied that the learned Magistrate, instead of giving effect to his dislike of a "type of offence" which we must all abhor, had seriously applied his mind to the facts of each case, and in particular had considered (a) the degree of intoxication and therefore the degree of the appellant's incapacity to control his vehicle, and (b) the effect of his sentence, including the disqualification, on the individual he was punishing. In case No. 229 of 1953 I should in any event have substituted a fine for imprisonment, because the medical evidence showed that the appellant was in a "mild" state of intoxication. But shortly, in considering whether a prison sentence should be imposed in the case of a first offender, the facts of the case must be carefully studied and the gravity assessed according to the 'yard stick' afforded by the Legislature in providing a maximum of 4 months imprisonment for a first offence. Upon the charges of "driving under the influence" I quashed the sentences of imprisonment and substituted fines of $400 in cases No. 231 of 1953 and No. 218 of 1953 and a fine of $250 in case No. 229 of 1953 (where the appellant was a taxi-driver and the disqualification entailed the loss of his livelihood).

It remains to consider certain points of law which arose in case No. 231 of 1953. The appellant was charged with "driving under the influence" (section 27(1)), "negligent driving" (section 25(2)), and "driving without a licence" (section 13(5)). He pleaded guilty to the 3rd charge. He was found guilty upon the first and second charges, and sentenced to 3 months imprisonment upon the first charge and fined $50 upon the second. I agree that he was rightly charged with the additional charge of negligent driving and rightly convicted because the offence of negligent driving is a separate and distinct offence from "driving under the influence". (A person may "drive under the influence" and yet not drive negligently). But having punished the appellant in respect of the first charge, a nominal penalty should have been imposed in respect of the second, and I substituted a fine of $10 for the fine $50 on the 2nd charge. In this connection I may draw attention to the sentences imposed in the case of *James William Howell*[1].

One of the grounds of appeal was that the charge was bad for duplicity in that it charged the appellant with driving "whilst under the influence of drink or drugs". That point is disposed of by the decision in *Thompson v. Knight*[2].

*Sentences of imprisonment quashed. Fines substituted.*

Solicitors for appellants: *Battenberg & Talma; Osborne Jones & Co.; and L. Rayner.*

## TAN KHOON HONG v. A. M. THORNLAY (W.).

[O. C. J. (Murray-Aynsley, C.J.) March 31, 1954]

[Singapore — Originating Motion No. 65 of 1953]

*Landlord and tenant — Control of Rent Ordinance, 1953, ss. 7 & 9 — Proviso to s. 9(1)(b) — Interpretation of — Powers of Rent Conciliation Board.*

On the 11th June 1953, the applicant entered into a written agreement with the respondent, under which the respondent was to become the applicant's tenant of certain premises at a monthly rental of $1,000 payable in advance, and subject to the covenants of the written agreement.

On the 29th June 1953, the applicant took out a summons before the Rent Conciliation Board to increase the rent of the premises from $162 to $1,000 in accordance with the Tenancy Agreement.

On the 20th July 1953, the Control of Rent Ordinance 1953 came into force.

Upon the hearing of the application which took place subsequent to the coming into force of the 1953 Ordinance, Counsel for the applicant contended that having regard to the date when the application was filed, the Board should exercise jurisdiction under the 1947 Ordinance. The Board held that its powers were confined to those conferred by section 9 of the 1953 Ordinance, that it could only award an increase of rent as prescribed by that section, and that consequently it could not fix the rent at the figure sought by the applicant. The applicant applied by Motion to the High Court for a review of the Board's decision, —

**Held:** (1) the decision of the rent Conciliation Board was right; there was no Rent Conciliation Board in existence at the time the application was heard with jurisdiction to make the increase sought for; (2) the reference to section 7(1)(c) and through it to the First Schedule in section 9(1)(b) of the Control of Rent Ordinance, 1953, is merely for the purpose of showing what the permitted increase is, and section 7(1)(c) does not cut down the generality of the limitation imposed by the proviso on the powers of the Board.

*In re Application of Laycock & Ong*[1] dissented from in so far as it related to the interpretation of the proviso to section 9(1)(b) of the Control of Rent Ordinance, 1953.

*Case referred to:—*

(1) *In re Application of Laycock & Ong* (1954) M.L.J 41.

APPLICATION FOR REVIEW.

*K. Gould* for the applicant.

*M. W. Maxwell* for the respondent.